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Supreme Court of the United States

OCTOBER TERM, 1950.

No. 87.

WALTER K. WARREN,

Petitioner,

against

UNITED STATES OF AMERICA.

MOTION BY UNITED STATES LINES COMPANY FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE.*

United States Lines Company respectfully moves this Court pursuant to Rule 27, Paragraph 9 of the Rules of this Court for leave to file a brief in this case *amicus curiae.* Both parties have refused to consent to the filing of such brief. Petitioner, naturally, does not wish additional opposition. It is not the practice of the Department of Justice to so consent.

The petition for certiorari in the case at bar asserts a seaman's right to recover maintenance on account of injuries received ashore. It is based on a misapplication of *Aguilar* against *Standard Oil Company,* 318 U. S. 724 and also on a treaty popularly known as Convention 55 (Shipowners Liability Convention 1936, 54 Stat. 1693). It is asserted by petitioner that by reason of dicta in the *Aguilar* case and the terms of the treaty, seamen are entitled to

maintenance while ashore for pleasure irrespective of the circumstances under which the injuries are received. These were the questions presented on the petition for the writ of certiorari.

These contentions, if sustained, would put a heavy burden on the American merchant marine and, naturally, private shipping companies have a substantial interest in their disposition.

The United States Lines Company is a steamship company operating a large fleet of ships and it employs a large number of seamen. At the present time there are pending against United States Lines several cases involving claims by seamen to recover maintenance for injuries allegedly occurring while on shore for pleasure. Two of these cases are *Wilkie* v. *United States Lines Company*, pending in the United States District Court, Southern District of New York, and *Coimbra* v. *United States Lines Company*, pending in the City Court of the City of New York. In addition, a number of other claims have been made against United States Lines Company for maintenance arising out of shore injuries. Similar claims are being pressed against other steamship companies.

The liability of a shipowner for such maintenance is perhaps obscure. In *Aguilar* v. *Standard Oil Co.*, 318 U. S. 724, this Court, while allowing maintenance to a seaman who was injured on premises at which his ship had docked, left open the question of whether maintenance might be recoverable by seamen on account of injuries received while they are ashore for pleasure in public places. However, some courts, relying on the dicta in the *Aguilar* case, have permitted awards of maintenance under circumstances which were not considered at the time that the *Aguilar* opinion was handed down.

It so happens that the present counsel for the United States Lines Company were counsel for the Standard Oil Company in the *Aguilar* case. Indeed, the same counsel appeared for the United States in the case at bar in the Court of Appeals for the Second Circuit and in the trial Court.

Because of the aforementioned pending actions and the claims which are made from time to time against the movant, it has a substantial interest in the determination of this question. Its precise interest is that the doubts created by the *Aguilar* dicta may be set at rest and the *Aguilar* case confined strictly to its facts. It is well known in shipping circles that other steamship companies are similarly interested.

Neither party in the case at bar has yet filed a brief on this appeal, so that the arguments to be made by them are not presently known except as they may appear in the petition and brief for certiorari and the Solicitor General's brief in opposition thereto.

The United States, naturally, does not have the interests of a private shipowner. That it is the shipowner is accidental. It became a shipowner only because it could better conduct the war. Since that time it has withdrawn from private shipping. Thus, it is probable that the United States will not fully argue the private shipowner's position.

The indifference of the United States to the questions here involved was made abundantly clear in *Sullivan* v. *United States*, 179 F. 2d 924, affirming 73 F. Supp. 525. That case involved maintenance for shore injuries. It was argued and decided by the same Court at the same time as the case at bar. The facts there were slightly different. Because of this Court's dicta in the *Aguilar* case, the Court of Appeals felt constrained to allow Sullivan maintenance.

However, speaking of the United States (the shipowner) the Court said (p. 925):

> "The appellant also submits cogent arguments for denying recovery under such circumstances as the case at bar presents. But if the principles of the Aguilar case are to be so restricted, a decision to that effect must be obtained from the court of last resort."

Among the circumstances referred to was the fact that Sullivan was not on articles, did not sleep on board the ship and, indeed, received an allowance for board and lodging for sleeping ashore. His injuries occurred while he was approaching the ship, while still on a public street and while he was somewhat under the influence of liquor.

It is plain that the Court of Appeals was desirous of setting these questions to rest and that, if it had relied on its own notion of the law, might well have denied maintenance.

Present counsel who represented the United States on that appeal and in the trial court urgently requested the Attorney General to petition this Court for a writ of certiorari but the request was refused. In the face of the language of the Court of Appeals, a private shipowner would have had no hesitancy whatever in seeking a writ of certiorari. The case had been appealed by the shipowner in the first instance as a test case (the amount involved was but $1,515.50). The United States, not faced with a private shipowner's problems, did not have sufficient concern for a settlement of this very burdensome problem to even make an application for certiorari.

That the dicta in the *Aguilar* case has made the problem of maintenance for shore injuries an unjust burden on ship-

owners may be readily gleaned from the appendix annexed to this motion (pp. 7-9) which synopsizes the facts in the cases which have been decided to date extending the limits of the *Aguilar* decision. It will be seen that they range from barroom and street brawls to bedroom escapades.

It is noted also that in the case at bar in its brief in opposition to the petition for certiorari the United States said very little about this problem, again evincing lukewarm interest in the subject.

It is not known what position the United States will take on the question of the application of the Shipowner's Liability Convention of 1936, 54 Stat. 1693. While the brief opposing certiorari made a short argument supporting the position of the shipowner with regard to interpretation of the treaty, the argument was not made from the private shipowner's viewpoint. No consideration was given to the effect which an erroneous interpretation of the Convention might have on private shipowners and the excessive financial and other burdens which it would impose.

It is submitted that, in any event, the shipowner's point of view should be before the Court. At the present time, the merchant marine of the United States is in a critical condition. Operating costs are considerably higher than those of competing foreign nations and before additional burdens are placed on the American merchant marine, it should at least have a hearing. Such hearing could be obtained by this court's permission to file a brief *amicus curiae*.

UNITED STATES LINES COMPANY RESPECTFULLY PRAYS THAT IT BE PERMITTED TO FILE A BRIEF *amicus curiae* TO SET FORTH VIEWPOINTS AND ARGUMENTS ON THE QUESTIONS INVOLVED IN THE CASE AT BAR WHICH MAY OTHERWISE NOT BE PRESENTED BY THE PARTIES.

Dated New York, December 8, 1950.

Respectfully submitted

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APPENDIX.

SYNOPSIS OF CASES ALLOWING MAINTENANCE FOR SHORE INJURIES BECAUSE OF *AGUILAR* DICTA.

Barroom Brawls.

Moss v. *Alaska Packers Association*, 1945 AMC 493, 70 Cal. Ap. 2d 857, 160 P. 2d 224.

In a bar in Tasmania, Moss consumed 5 drinks of straight Scotch whiskey and was later struck over the head by persons unknown. He was allowed maintenance for injuries so sustained.

Nowery v. *Smith, et al.*, 69 F. Supp. 755 Aff'd 161 F. 2d 732.

Nowery and shipmates after consuming liquor in a bar quarreled and brawled. Maintenance was allowed.

Brawls in Public Streets.

Sullivan v. *United States of America*, 73 F. Supp. 525, aff'd 179 F. 2d 924.

Sullivan was injured in a street altercation, according to police records, after having consumed 18 to 20 glasses of beer. Maintenance was allowed because of libelant's story that the altercation was a hold-up, although he was unable to explain how his leg was fractured.

Stanley v. *Weyerhaeuser Steamship Company, et al.* (Superior Court, State of Cal.) 1947 AMC 411. (Not officially reported.)

When 17 miles from his vessel and under the influence of alcohol, Stanley received injuries under circumstances that he professed not to know. The shipowner had to pay maintenance.

Grovell v. *Stockard Steamship Co.*, 78 F. Supp. 931.

While ashore at Catania, Sicily, Grovell got into an argument with a native hack driver who flicked his whip at him causing injuries. Maintenance was allowed.

INJURIES SUFFERED AT PLACES REMOTE FROM VESSEL.

Smith v. *United States of America*, 167 F. 2d 550, reversing 74 F. Supp. 275.

Smith seven miles from his vessel fractured his ankle when leaving a friend's home in fall on defective sidewalk. Maintenance allowed.

Petersen v. *Marine Transport Lines, Inc.*, Superior Court of California, 1948 AMC 544. Petersen's vessel was in the Philippine Islands. While ashore for pleasure he rode to an outlying district in an army truck. He was set upon by assailants and injured. The court stated that there was no evidence of misconduct on Petersen's part but this is not unusual. The seaman denied it and the shipowner could never prove it. Petersen was allowed maintenance.

Taylor v. *United Fruit Company*, New York Supreme Court (Appellate Term) 1947 AMC 1297. (Not officially reported.)

Taylor, although working on a ship, ate and slept at home receiving money allowance therefor. When going from his home to purchase newspaper, he became embroiled in an altercation and received injuries. Judgment allowing maintenance was reversed by the Appellate Court.

Dasher v. *United States of America*, 59 F. Supp. 742. This decision involved only a matter of pleadings. Dasher after consuming liquor journeyed into the hills inland from the port of Oran, Algeria where his ship was moored. While in the hills more drinking followed and he suffered injuries under circumstances which he professed were unknown to him. Exceptions were filed to the libel but they were overruled. Dasher's action was dismissed for failure to prosecute.

Ellis v. *American Hawaiian S. S. Co.*, 165 F. 2d. at 999.

Ellis, after having consumed a quantity of alcohol dove from a spring board into a partly filled pool and received injuries. He was allowed maintenance.

Injuries As A Sequel To Vice.

Koistinen v. *American Export Lines, Inc.*, 194 Misc. (N. Y.) 942; 1948 A. M. C. 1464. While his vessel was at a port in Yugoslavia, Koistinen visited a saloon. There he met a woman who lured him to her room as the court puts it "for purposes not particularly platonic;". Koistinen allegedly resisted her charms and then refused to offer her money. She locked the door. Thereafter a man presumably her husband appeared in the doorway causing Koistinen to decide to leave by jumping from the window. In doing so, he sustained injuries. The court allowed him maintenance. In reaching this conclusion the court said that defendant had failed to *prove* that the injuries were sustained through vice, willful misbehavior or deliberate act of indiscretion.

The rule established by this case makes ridiculous the standards of shipowner's liability for maintenance and makes impossible any defense even where the injuries are due to vice.